

## BILL ANALYSIS

Department, Board, Or Commission <b>Franchise Tax Board</b>	Author Chiu & Atkins, et al.	Bill Number <b>AB 35</b>
--	---------------------------------	-----------------------------

### SUBJECT

Low-Income Housing Credit

### SUMMARY

This bill would modify the existing Low-Income Housing Credit (LIHC) to increase the amount of credit that may be allocated.

This analysis only addresses the provisions of this bill that would impact the department's programs and operations, and not those provisions administered by the California Tax Credit Allocation Committee (Allocation Committee).

The bill includes language to prevent chaptering issues with SB 377 (Beall).

### REASON FOR THE BILL

The reason for the bill is to encourage investment in older low-income housing in the state by providing a tax credit program that targets this type of investment.

### EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for allocations made for calendar years 2016 through 2021.

### FEDERAL/STATE LAW

Current federal tax law allows a LIHC for the costs of constructing, rehabilitating, or acquiring low-income housing. The credit amount varies depending on several factors, including when the housing was placed in service and whether it was federally subsidized and varies between 30 and 70 percent of the present value of the qualified low-income housing. The credit is claimed over ten years.

The Allocation Committee allocates and administers the federal and state LIHC Programs.

Current state tax law generally conforms to federal law (Section 42 of the Internal Revenue Code) with respect to the LIHC, except that the state LIHC is claimed over four taxable years, is limited to projects located in California, must be allocated and authorized by the Allocation Committee, rents must be maintained at low-income levels for 30 years, and the Allocation Committee must have authorized a federal credit to the taxpayer or the taxpayer must qualify for the federal credit.

---

Gail Hall, FTB Contact Person  
(916) 845-6333 (Office)

Executive Officer  
Selvi Stanislaus

Date  
09/16/15

The LIHC is allocated in amounts equal to the sum of all the following:

- \$100 million,<sup>1</sup>
- The unused housing credit ceiling, if any, for the preceding calendar years, and
- The amount of housing credit ceiling returned in the calendar year.

Any unused credit may continue to be carried forward until the credit is exhausted.

The taxpayer is required to provide to the Franchise Tax Board (FTB), upon request, a copy of the certification received from the Allocation Committee that includes the amount of tax credit allocated to the taxpayer for each credit period.

**BACKGROUND**

California law, as discussed above, currently provides a LIHC. FTB data for tax year 2012, the most recent year data is available, provides the following information for the California LIHC.

**Personal Income Tax (PIT) 2012:**

Adjusted Gross Income Class	Returns Allowing Credit	Amount of Credit Allowed (Thousands)
Less than \$10,000	3	\$0.1
\$10,000 to \$19,999	7	\$0.5
\$20,000 to \$49,999	60	\$21.5
\$50,000 to \$99,999	95	\$51.7
\$100,000 to \$199,999	58	\$65.4
\$200,000 to \$499,999	49	\$82.4
\$500,000 to \$999,999	28	\$63.3
More than \$999,999	34	\$356.5
Total	334	\$641.3

---

<sup>1</sup> The statutory \$70 million allocation amount indexed by the Consumer Price Index through 2015.

<b>Allowed by Industry (Corporation): 2012</b>				
Industry	Returns with Credit		Percent of Total	
	Returns Allowing Credit	Amount of Credit Allowed (Millions)	Returns	Credit Allowed
Finance and Insurance	6	\$6.8	31.6%	21.2%
Real Estate	3	\$0.1	15.8%	0.3%
Other	10	\$25.1	52.6%	78.5%
<b>Total</b>	<b>19</b>	<b>\$32.0</b>	<b>100.0%</b>	<b>100.0%</b>

**THIS BILL**

The bill, among other things, would increase the amount of credit that may be allocated under the existing LIHC to the following:

- an additional \$100 million for the 2016 calendar year, and
- an additional \$100 million increased by the Consumer Price Index for calendar years 2017 through 2021.

The Allocation Committee would be required to enter into an agreement with the FTB to pay any costs incurred by the FTB in the administration of the LIHC.

**LEGISLATIVE HISTORY**

SB 377 (Beall, 2015/2016) would, among other things, amend the LIHC to allow the credit to be sold to an unrelated party. SB 377 was enrolled on September 11, 2015.

AB 952 (Atkins, Chapter 771, Statutes of 2013), amended the existing LIHC to allow the state’s Housing Credits to be used in a Difficult Area or Tract for projects that dedicate at least 50 percent of the project’s units to be reserved for special needs populations as defined by the Allocation Committee’s regulations, allow the Allocation Committee to replace the federal Housing Credit with a state Housing Credit of up to 30 percent of a project's eligible basis, if the federal Housing Credit is reduced in an equivalent amount, and to require the Allocation Committee to determine the equivalent amount of state Housing Credit necessary to replace the federal Housing Credit a taxpayer would have received.

SB 16 (Lowenthal, 2009/2010), would have made the LIHC refundable and would have extended the partnership allocation rules for the preliminary reservation of the state LIHC during tax year 2008. SB 16 failed passage out of the Senate by the constitutional deadline.

SB 585 (Lowenthal, Chapter 382, Statutes of 2008), requires a project that receives a preliminary reservation of the LIHC on or after January 1, 2009, and before January 1, 2016, to allocate the LIHC to the partners of a partnership owning a low-income housing project in accordance with a partnership agreement, regardless of how the federal LIHC is allocated to the partners or whether the allocation of the credit under the terms of the agreement has substantial economic effect

under Internal Revenue Code section 704(b). In addition, SB 585 requires a deferral of any loss or deduction attributable to the sale, transfer, exchange, abandonment, or any other disposition of a partnership interest where the credit was allocated without substantial economic effect. The loss is deferred until the first taxable year immediately following the end of the ten-year credit period for which the federal credit is allowed.

SB 1247 (Lowenthal, Chapter 521, Statutes of 2008), repealed the farmworker housing credit (FWHC) from the Revenue and Taxation Code and required the FWHC to be allocated in the same manner as the state LIHC. SB 1247 specifies that the \$500,000 annual cap plus any unallocated credit under current law is exclusively for farmworker housing and allows any FWHC that is unallocated or returned to be added to the annual credit allocation cap until exhausted. This act also allows the FWHC to be awarded independently of the federal LIHC.

**OTHER STATES’ INFORMATION**

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

*Florida, Michigan, and Minnesota*, lack a state LIHC.

*Illinois* currently offers a state LIHC program that is funded on donations made to the program. A state tax credit is available at 50 cents for every dollar donated.

*Massachusetts*<sup>2</sup>, and *New York*<sup>3</sup> offer a state LIHC similar to the credit currently offered in California.

**FISCAL IMPACT**

This bill would not significantly impact the department’s costs.

**ECONOMIC IMPACT**

**Revenue Estimate**

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 35 Assumed Enactment After June 30, 2015 (\$ in Millions)		
2015-16	2016-17	2017-18
- \$15	- \$50	- \$60

<sup>2</sup> Currently capped at \$20,000,000 per calendar year.

<sup>3</sup> Not currently allocated on a calendar year basis.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill. In addition, this estimate only reflects the revenue impact to income and franchise taxes.

### **Revenue Discussion:**

Using LIHC allocation data from the Allocation Committee, it is assumed that the maximum credit allocation would be reached each year. This bill authorizes an additional \$100 million in LIHC allocations. It is assumed that five percent, or \$5 million, of the allocation would ultimately be returned to the Allocation Committee due to unforeseen project issues. Based on current credit awards and usage, it is estimated that 70 percent of the remaining annual credits would be used to offset income and franchise taxes and the remainder would be used against insurance taxes, which is not included in the table above. Based on current LIHC usage, it is assumed that 75 percent of the credit would be used in the year generated and the remaining 25 percent would be carried forward to future years. Current usage indicates that 98 percent would be claimed by corporations and the remaining 2 percent would be claimed by personal income taxpayers.

It is estimated that once fully phased in, the annual revenue loss would be approximately \$60 million in the 2021 taxable year.

The tax year estimates are converted to fiscal year estimates, and then rounded and reflected in the table above.

### **APPOINTMENTS**

None.

### **SUPPORT/OPPOSITION<sup>4</sup>**

Support: A Community of Friends, Affirmed Housing, Affordable Housing Inc, Affordable Housing Association – Pacific Southwest, Alameda County Development Disabilities Council, Alameda County Housing Authority, Alpha Construction Co, Inc., American Planning Association; California Chapter, Amy Hiestand Consulting, Angelus Plaza; a Retirement Housing Foundation, Association of Bay Area Governments, Bay Area Council, Be. Group, Beacon Communications/ABHOW, Betty Yee; California State Controller, Bridge Housing, Burbank Housing Corporation, Burbank Housing Development Corporation, Cabrillo Economic Development Corporation, California Alliance for Retired Americans, California Apartment Association, California Association of Housing Authorities, California Association of Local Housing Finance Agencies, California Bankers Association, California Building Industry Association, California Center for Cooperative Development, California Chamber of Commerce, California Coalition for Rural Housing, California Coalition for Youth, California Council for Affordable Housing, California Council of Community Mental Health Agencies, California Housing Consortium, California Housing Partnership Corporation, California Infill Builders Federation, California Institute for Rural Studies, California Partnership for End Domestic Violence, California

---

<sup>4</sup> As provided in the Assembly Revenue and Taxation Committee analysis dated May 15, 2015.

Special Districts Association, Capital Area Development Authority, Christian Church Homes, Cities Association of Santa Clara County, City and County of San Francisco, City of Banning, City of Berkeley, City of Concord, City of Lakewood, City of Napa, City of Sacramento, City of San Diego, City of Santa Barbara, City of South San Francisco, City of Thousand Oaks, City of Union City, community Action North Bay, Community Corporation of Santa Monica, Community Economics Inc, Community Housing Opportunities Corporation, Community Housing Partnership, Community Housing Works, Community Land Trust Association, Community Leadership Association, Community Overcoming Relationship Abuse, Contra Costa Interfaith Housing, Core Affordable Housing, Corporation for Supportive Housing, County of Santa Clara, Devine & Gong Inc, Domus Development, Downtown Women's Center, EAH Housing, East Bay Legislative Coalition, Eden Housing, First community Housing, Goldfarb & Lipman LLP, Habitat for Humanity, HCEB, Highridge Costa Housing Partners LLC, Highridge Costa Investors LLC, HIP Housing Inc., HKIT Architects, Housing Authority; City of San Buenaventura, Housing Authority; City of Santa Barbara, Housing Authority; City of Santa Clara, Housing California, Housing Choices Coalition, Housing Element of the City of Emeryville, Housing Leadership Council of San Mateo County, Housing Trust Silicon Valley, Hudson Housing Capital, Hunger Advocacy Network, Jamboree Housing Corporation, Kennedy Commission, Korean Resource Center, Larkin Street Youth Services, Laurin Associates, Law Foundation of Silicon Valley, Leadership Counsel for Justice and Accountability Support, Leading Age California, LINC Housing, Linda M. Nelson DBA Nelson Rental Consultant, Little Tokyo Service Center CDC, Los Angeles Area Chamber of Commerce, Los Angeles community Action Network, Many Mansions, Mental Health America of California, Mercy Housing California, Nancy Lewis Associates, Inc., Napa Valley Community Housing, National Association of Social Workers, California Chapter, National Housing Law Project, NeighborWorks Orange County, Newman Garrison and Partners, Inc., Non-Profit Housing Association of Northern California, North Bay Leadership Council, Northern California Community Loan Fund, Northern California Presbyterian Homes and Services, Onyx Architects, Orange Coast Interfaith Shelter, Pacific West Communities, PATH, Palm Communities, People's Self Help Housing Corporation, PEP Housing, Powell & Partners, Architects, Project Access, Inc. Promise Energy, Resources for Community Development, Retirement Housing Foundation, Rural Communities Housing Development Corporation Support, Rural Community Assistance Corporation, Sacramento Housing Alliance, Sacramento Homeless Organizing Committee, Sacramento Loaves and Fishes, San Diego County Apartment Association, San Diego Housing Commission, San Diego Housing Federation, San Diego Organizing Project, San Diego Regional Chamber of Commerce, San Diego Tenant Association, San Francisco Housing Action Coalition, San Francisco Unified School District, San Joaquin Valley Housing Collaborative, San Luis Obispo County Housing, Trust Fund Santa Clara County Board of Supervisors Satellite Affordable Housing Associates, Self-Help Enterprises Sierra Business Council Shelter Partnership, Inc., Silicon Valley Bank, Silicon Valley Leadership Group, Skid Row Housing Trust, Sonoma County Housing Advocacy Group, Southern California Association of Non-Profit Housing Support, St. Anthony Foundation, St. Vincent's, TELACU Residential Management, Tenemos que Reclamar y Unidos Salvar La Tierra (T.R.U.S.T. South LA), Thomas Safran & Associates, Trinity Center Walnut Creek United Ways of California Urban Habitat, Venice Community Housing Corporation, Walkland Housing and Development, Corporation Ward Economic Development, Corporation Western Seniors Housing, Inc., WORKS, Yolo Housing, Nine private individuals.

Opposition: None Provided.

**VOTES**

	<b>Date</b>	<b>Yes</b>	<b>No</b>
Concurrence	09/12/15	79	0
Senate Floor	09/11/15	38	2
Assembly Floor	06/04/15	78	0

**LEGISLATIVE STAFF CONTACT****Contact****Work**

Marybel Batjer, Agency Secretary, GovOps

916-651-9024

Jennifer Osborn, Deputy Secretary, Fiscal Policy and Administration, GovOps

916-651-9100

Selvi Stanislaus, Executive Officer, FTB

916-845-4543

Gail Hall, Legislative Director, FTB

916-845-6333